

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



**PA 13-218—sSB 523**

*Aging Committee*

**AN ACT CONCERNING THE RETURN OF A GIFT TO A PERSON IN  
NEED OF LONG-TERM CARE SERVICES**

**SUMMARY:** By law, the Department of Social Services (DSS) commissioner must impose a penalty period (period of Medicaid ineligibility) on institutionalized individuals who transfer or assign their assets for less than they are worth in order to shift their care costs to the Medicaid program. The penalty period (1) applies only when such transactions occur within five years before a person applies for Medicaid long-term care and (2) generally is not imposed if the entire amount of the transferred asset is returned to the institutionalized individual. Institutionalized individuals are people who apply for or are receiving long-term care facility or Medicaid waiver home- and community-based services.

The act requires the commissioner, to the extent permitted by federal law, to reduce the penalty period if (1) part of the transferred assets is returned to the individual and (2) the penalty period's original end date does not change. DSS must consider the entire amount of the returned asset to be available to the transferor from the date it was returned. It cannot determine the transferor to be ineligible for Medicaid in the month the transferred asset is returned as long as the individual reduced the returned asset in accordance with federal law (e.g., did not make the transfer to shift care costs to the Medicaid program).

By law, a conveyance and subsequent return of an asset to shift costs to the Medicaid program is deemed a trust-like device, and the asset is considered available for determining Medicaid eligibility. The act specifies that this does not apply to a conveyance and return of an asset made exclusively for a purpose other than qualifying for Medicaid long-term care services.

The act also repeals a provision requiring DSS to penalize a nursing home resident for an improper asset transfer (as determined by the department) in which the entire amount is returned.

Lastly, the act makes technical changes.

EFFECTIVE DATE: July 1, 2013

**COMPLETE ASSET RETURNS**

The act eliminates a provision requiring DSS, based on the circumstances surrounding the transaction, to penalize a nursing home resident to whom the entire amount of a transferred asset is returned. Under this repealed provision, DSS had to penalize the resident if it determined that the individual, or his or her spouse or authorized representative, intended from the time the asset was transferred to (1) change the start date of the penalty period or (2) shift long-term care facility costs to the Medicaid program. Unless the individual could prove

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otherwise by clear and convincing evidence, the entire amount of the returned asset was available from the transfer date. If the individual prevailed, the asset was deemed available from the date of its return.

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